IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

WP(C).No. 16001 of 2006(E)

AGAINST THE ORDER DATED 30/11/2005 IN EP.611/03 IN OS.353/1994 of MUNSIFF COURT, CHITTUR

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PETITIONER:

THANKA, W/O.UNNI @ KRISHNAN, RESIDING AT VALARA, VALIYAVALLAMPATHY VILLAGE, PALAKKAD.

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON
SRI.SREEKANTH.K.R
SRI.JIBU P THOMAS

RESPONDENTS:

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1. MONISHA, D/O.SREENIVASAN, RESIDING AT KRISHNA VIHAR, AMBATTUPALAYAM, CHITTUR TALUK, PALAKKAD.

2. PUSHPAVATHY, W/O.SREENIVASAN, RESIDING AT VALARA, VALIYAVALLAMPATHY VILLAGE, PALAKKAD.

BY ADV. SRI.RAJESH SIVARAMANKUTTY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the order in E.P.No.611/2003 in O.S.No.353/1994 on the file of the court of the Munsiff of Chittur dated 30-11-2005.

// True copy //

P.A. to Judge

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M.N.KRISHNAN, J.

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W.P.(C)NO.16001 OF 2006

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Dated this the 1st day of February 2007

JUDGMENT

This writ petition is filed with a prayer that the 1/3rd out of 1/7th share of the property obtained by the husband of the writ petitioner in a partition deed be sold at the first instance in execution of a decree. The brief facts necessary for the disposal of the writ petition are that the daughter had obtained a decree against the father for maintenance. The father had one out of seven shares in the total property and as per a partition deed 'B' schedule property was set apart to her share. Now the decree holder wants to proceed against that property for realisation of the amount. The learned counsel for the writ petitioner submits that the court below be directed to sell 1/3rd of the 1/7th share obtained first and, if necessary, to proceed with the remaining property and in the alternative give time for payment of the amount in instalments.

2. Heard both sides. So far as the prayer for instalment facility is concerned, it is submitted by the decree holder that his

interest is only in receiving the amount under decree and no objection in granting a reasonable time. Rs.15,000/- had been deposited as per the direction of this court and therefore, I feel the instalment facility can be granted by directing the judgment debtor to pay the amount in six monthly equal instalments and the first instalment to commence from 15-3-2007. In case of default of two instalments the decree holder will be entitled to proceed against the property.

3. So far as the prayer for sale of 1/3rd out of 1/7th share is concerned, it has to be stated by virtue of division between the members of the family the father's share has been crystallized into 'B' schedule and on his death legal heirs each are entitled to equal share. Therefore, it is only just and reasonable to direct the trial court to proceed with the sale of the property so as to satisfy the decree debt when the breach of condition is committed. It is settled principle that when the father leaves a debt, then the property has to be utilized first for discharging the debt and only the balance has to be shared by the other sharers

equally thereafter. Therefore, the prayer of the judgment debtor to proceed against the schedule 'B' property in case of default of making the payment of instalment is only to be accepted.

Writ petition is disposed of accordingly.

M.N.KRISHNAN, JUDGE

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